

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

HUONGSTEN PRODUCTION IMPORT & EXPORT CO. LTD, ET AL.

Plaintiffs,

V.

Civil No. 10-1610 (SEC)

SANCO METALS LLC., ET AL.

Defendants.

OPINION AND ORDER

Before the Court are plaintiffs' motion for summary judgment (Docket # 277), counterclaimant's opposition thereto (Dockets # 287), and the parties' respective replies (Docket # 293 & 302). After reviewing the filings and the applicable law, plaintiffs' motion is

Factual and procedural Background

This diversity action originated on July 2, 2010, when plaintiffs Huongsen Production Import & Export Company LTD a/k/a Senprodimex Vietnam, Linh Hoang, and Tung Mai's (collectively, "Plaintiffs") filed suit for breach of contract and damages against counterclaimant Michael Nguyen, among others. Docket # 1.¹ The underlying suit centered around allegations that Nguyen, along with several co-defendants, deceived Plaintiffs into disbursing almost three million dollars by issuing bogus documents for the extraction of steel and scrap metal from the Lafayette Mill (the "Mill") in Arroyo, Puerto Rico.

¹As relevant here, the other co-defendants are Sanco Metals LLC, Sanco Metal & Recycling Center-Puerto Rico Branch, and Helen Lyvuong (collectively, “SANCO”), Zen America Capital Corporation (“Zen America”), and Puerto Rico Salvage & Demolition Corp (“PRSD”). On March 14, 2011, this court entered a Nunc Pro Tunc Amended Default Partial Judgment against Zen America and PRSD, among others. Docket # 165.

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2 A comprehensive recitation of the facts of this case can be found in this court's opinion
3 issued on September 12, 2011. See Huongsten Production Import & Export Co. Ltd. v. Sanco
4 Metals LLC, 810 F.Supp.2d 418 (D.P.R. 2011). Here, the Court recounts only those facts
5 necessary to set the stage for the analysis. The uncontested, material facts thus follow.
6

7 Plaintiffs are a limited liability company organized under the laws of the Socialist
8 Republic of Vietnam, and two of its representatives. Counterclaimant Nguyen, a resident of
9 Oregon before moving to Puerto Rico, was a broker in the Puerto Rico scrap metal business at
10 all times relevant to this case. Docket # 117-1, Exh 1 ¶¶ 2-4. Plaintiffs, at some point in time,
11 decided to acquire the steel and scrap metal located at the Mill. For his part, Nguyen actively
12 participated in "brokering" the sale of the Mill's metal, and, to that effect, contacted SANCO.
13 Huongsten Production Import & Export Co. Ltd., 810 F.Supp.2d at 429 (citing Docket # 117-1,
14 Exh. 1 ¶¶ 4-11). As a result of Nguyen's endeavors, SANCO and Plaintiffs signed the SANCO-
15 Plaintiffs contract (the "Contract") for the sale of the Mill's steel and scrap metal. Even though
16 Nguyen was not a party to that business transaction (SUF, ¶ 4), he prepared the inspection report
17 Plaintiffs had required as a condition precedent to the signing of the Contract. Docket # 117-1,
18 Exh 1 ¶ 13.

19 As a consequence of their transaction with SANCO, and seeking to have the metal
20 shipped back to Vietnam, Plaintiffs signed two service agreements with defaulted co-defendants
21 PRSD and Zen America to remove, process, transport, and load onto a vessel all of the metal.
22 According to Nguyen's counterclaim, Zen America also contracted him on a "commission basis
23 to show them the ropes" of the scrap metal business in Puerto Rico. Docket # 172, ¶ 44. But
24 things went awry: PRSD and Zen America neither performed nor obtained a series of permits,
25 and, although Plaintiffs disbursed over two millions dollars, they never received any metal.
26

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2 Huongsten Production Import & Export Co. Ltd., 810 F.Supp.2d at 426. Plaintiffs ultimately
3 filed suit, alleging to have suffered losses totaling \$2,960,000. Docket # 1.

5 After answering the complaint, Nguyen and the SANCO defendants counterclaimed
6 under one sole cause of action: “Negligence in the Execution of [Plaintiffs’] contractual
7 obligations.” Docket # 172, p. 34.² Specifically, Nguyen argued that Plaintiffs negligently hired
8 PRSD “with the knowledge that it lacked the proper permits.” Id., ¶ 68. He also averred that the
9 “true cause” why Plaintiffs never received anything was not SANCO and Nguyen’s negligence
10 but Plaintiff’s own failure to properly extract the metal. Id., ¶ 70. Further, Nguyen assailed
11 Plaintiffs for failing to secure the Mill. Such a lack of security, he alleged, culminated in the
12 looting of the Mill’s premises. Without any elaboration, Nguyen contended that Plaintiffs’
13 actions have caused “economic harm, harm to his business and personal reputation, and
14 emotional distress.” Id., ¶ 172.

15 On September 12, 2011, this court granted partial summary judgment for Plaintiffs and
16 against SANCO. And, after finding that Plaintiffs’ consent was vitiated with substantial *dolo*,
17 annulled the Contract. Huongsten Production Import & Export Co. Ltd., 810 F.Supp.2d at 434
18 (citing P.R. Laws Ann. tit. 31, § 3511-3512). SANCO’s “deceitful concealment” of the
19 inspection report’s misrepresentations, this court reasoned, misled Plaintiffs into disbursing
20 millions of dollars. Id. at 430. The Court considered, among other factors, that SANCO had
21 remained silent that it had been Nguyen—not a professional as Nguyen and SANCO had made

24 ² As previously indicated, the SANCO defendants and Nguyen were in cahoots: besides their
25 protagonist role in the “business” with Plaintiffs, they shared the same counsel, as well as identical
26 defenses. Huongsten Production Import & Export Co. Ltd., 810 F.Supp.2d at 429. Their counterclaim,
which unfortunately provides no factual differentiation between the SANCO defendants and Nguyen,
is identical.

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3 Plaintiffs believe—who had masterminded the inspection report. Id. In a nutshell, it held that
 4 Nguyen had a significant involvement in the hoax perpetuated by SANCO against Plaintiffs.
 5 The SANCO defendants then filed for bankruptcy in late 2011, and an automatic stay was put
 6 in effect shortly thereafter. Docket # 258. The case, however, has continued as to Nguyen.

7 As the case proceeded, Plaintiffs filed the instant motion for summary judgment, seeking
 8 dismissal of Nguyen’s counterclaim. They argue that Nguyen’s counterclaim (1) does not allude
 9 to a “contractual obligation for obtaining permits or actually maintaining security at the Mill”;
 10 (2) fails to satisfy a contractual negligence cause of action; (3) fails to properly allege causation;
 11 and (4) “harm does not relate to their allegations regarding duty, breach, and causation.” Docket
 12 # 277, p. 2.

13 Nguyen, who now appears pro se, timely opposed. Docket # 287.³ Unfortunately, his
 14 opposition is devoid of a developed, coherent legal discussion and supporting authorities, in
 15 clear violation of Fed. R. Civ. P. 56, D.P.R. Civ. R. 7(a), and the so-called anti-ferret rule.⁴

17
 18 ³ Because of irreconcilable differences between them, apparently related to fee payment, the
 19 Court authorized Nguyen and SANCO’s former counsel to withdraw. Dockets # 235 & 257.

20 ⁴ Plaintiffs complied with Rule 56 and submitted a statement of uncontested facts (“SUF”),
 21 numbered, and supported by record citations. Docket # 278. In contrast, Nguyen neither submitted an
 22 opposing statement of facts nor filed a statement of additional facts; rather, he included his scumbled,
 23 factual contentions in his opposition memoranda, which are bereft of any legal discussion or citations.
 24 The Court thus disregards Nguyen’s confusing averments. By like token, and because of lack of
 25 relevancy, the court ignores the affidavit (Docket # 287-2) included as part of Nguyen’s defective
 26 opposition; Nguyen’s pro se status does not insulate him from complying with Rule 56. See, e.g.,
Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997) (“Pro se status does not insulate a party from
 complying with procedural and substantive law.”). To make matters worse, Plaintiffs’ SUF, although
 fully compliant with Rule 56, is neither developed nor organized. The Court, in an attempt to offer a
 coherent narrative, has therefore been forced to allude to the factual determinations reached in the
 previous opinion. The factual conclusions contained therein, after all, are final, unappealable, and fully
 supported by the record.

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2 Nguyen nonetheless reiterates that Plaintiffs should respond for the “damages” they allegedly
3 caused to him as a result of negligently hiring PRSD and failing to provide security at the Mill.
4

5 **Standard of Review**

6 The Court may grant a motion for summary judgment when “the pleadings, depositions,
7 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
8 there is no genuine issue as to any material fact and that the moving party is entitled to judgment
9 as a matter of law.” Fed. R. Civ. P. 56(c); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
10 242, 248 (1986). In reaching such a determination, the Court may not weigh the evidence. *Casas*
11 *Office Machines, Inc. v. Mita Copystar America, Inc.*, 42 F.3d 668 (1st Cir. 1994). At this stage,
12 the court construes the record in the “light most flattering” to the nonmovant, resolving all
13 reasonable inferences in that party’s favor. *Soto-Padro v. Public Bldgs. Authority*, 675 F.3d 1
14 (1st Cir. 2012).

15 Once the movant has averred that there is an absence of evidence to support the
16 nonmoving party’s case, the burden shifts to the nonmovant to establish the existence of at least
17 one fact in issue that is both genuine and material. *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 48
18 (1st Cir. 1990) (citations omitted). “A factual issue is ‘genuine’ if ‘it may reasonably be resolved
19 in favor of either party and, therefore, requires the finder of fact to make a choice between the
20 parties’ differing versions of the truth at trial.’” *DePoutot v. Raffaelly*, 424 F.3d 112, 116 (1st
21 Cir. 2005) (quoting *Garside*, 895 F.2d at 48 (1st Cir. 1990)); *SEC v. Ficken*, 546 F.3d 45, 51 (1st
22 Cir. 2008). A fact is material, meanwhile, if it “[a]ffect[s] the outcome of the suit under the
23 governing law.” *Anderson*, 477 U.S. at 248.

24
25 In order to defeat summary judgment, the opposing party may not rest on conclusory
26 allegations, improbable inferences, and unsupported speculation. *Hadfield v. McDonough*, 407

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2 F.3d 11, 15 (1st Cir.2005) (citing Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8
3 (1st Cir.1990)). Nor will “effusive rhetoric” and “optimistic surmise” suffice to establish a
4 genuine issue of material fact. Cadle Co. v. Hayes, 116 F.3d 957, 960 (1st Cir.1997). Once the
5 party moving for summary judgment has established an absence of material facts in dispute, and
6 that he or she is entitled to judgment as a matter of law, the “party opposing summary judgment
7 must present definite, competent evidence to rebut the motion.” Méndez-Laboy v. Abbott Labs.,
8 Inc., 424 F.3d 35, 37 (1st Cir.2005) (citations and internal quotation marks omitted).
9

10 The foregoing means that the non-movant must “[p]roduce specific facts, in suitable
11 evidentiary form’ sufficient to limn a trial-worthy issue. . . . Failure to do so allows the summary
12 judgment engine to operate at full throttle.” Lawton v. State Mut. Life Assur. Co. of Am., 101
13 F.3d 218, 223 (1st Cir. 1996) (citations and internal quotation marks omitted); see also, e.g.,
14 Kelly v. United States, 924 F.2d 355, 358 (1st Cir.1991) (warning that “the decision to sit idly
15 by and allow the summary judgment proponent to configure the record is likely to prove fraught
16 with consequence”).

17 Further, when filing for summary judgment, both parties must comply with the
18 requirements of Local Rule 56 and file a statement of facts, set forth in numbered paragraphs,
19 and supported by record citations. D.P.R. Civ. R. 56(b). In turn, when confronted with a motion
20 for summary judgment, the opposing party must:
21

22 [s]ubmit with its opposition a separate, short, and concise statement of
23 material facts. The opposition shall admit, deny or qualify the facts by
24 reference to each numbered paragraph of the moving party’s statement of
25 material facts and unless a fact is admitted, shall support each denial or
qualification by a record citation as required by this rule. The opposing
statement may contain in a separate section additional facts, set forth in
separate numbered paragraphs and supported by a record citation
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3 D.P.R. Civ. R. 56(c) (emphasis added). The local rules further provide that “[a]n assertion of
 4 fact set forth in a statement of material facts shall be followed by a citation to the specific page
 5 or paragraph of identified record material supporting the assertion.” D.P.R. Civ. R. 56(e). And
 6 that a “court may disregard any statement of material fact not supported by a specific record
 7 citation to record material properly considered on summary judgment.” Id. When “a party
 8 opposing summary judgment fails to act in accordance with the rigors that such a rule imposes,
 9 a district court is free, in the exercise of its sound discretion, to accept the moving party’s facts
 10 as stated.” Caban Hernandez v. Phillip Morris USA, Inc., 486 F.3d 1, 7 (1st Cir. 2007) (citing
 11 Cosme-Rosado v. Serrano-Rodriguez, 360 F.3d 42, 45 (1st Cir. 2004)). These rules,
 12 furthermore, “are meant to ease the district court’s operose task and to prevent parties from
 13 unfairly shifting the burdens of litigation to the court.” Id. at 8. The First Circuit has repeatedly
 14 held that when the parties ignore the so-called anti-ferret rule, they do so at their own peril. E.g.,
 15 Ruiz Rivera v. Riley, 209 F.3d 24, 28 (1st Cir. 2000).

16 **Applicable Law and Analysis**

17 As stated previously, Nguyen’s cause of action faults Plaintiffs for their “negligence in
 18 the execution of their contractual obligations.” Docket # 172, p. 34. Favoring substance over
 19 form, the Court views Nguyen’s confusing and undeveloped cause of action not as a contractual
 20 claim (as Plaintiffs purportedly do) but as a general tort claim.⁵ A close examination shows that
 21 Nguyen’s cause of action is twofold. First, he complains that Plaintiffs, a principal, hired an
 22 independent contractor, PRSD, “with the knowledge that it lacked the proper permits.” Id., ¶
 23 68. Nguyen thus maintains that, because they knew of PRSD’s noncompliance, Plaintiffs should

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25 ⁵ As said, there is no contractual relationship between Nguyen and Plaintiffs. And a principal’s
 26 source of liability for the negligent acts of its contractors stems from Article 1802, P.R. Laws Ann. tit
 31, § 5141. See Lopez v. Cruz Ruiz, 1992 P.R.-Eng. 755, 510, 131 P.R. Dec. 694, 706 (1992).

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2 respond for the negligence of their contractor. Second, Nguyen contends that Plaintiffs “[f]ailed
3 to maintain any security at the Mill, causing the extraction of metal from looters at the area.”
4 Id., ¶ 69. None of these contentions has merit.
5

6 At the outset, the Court reiterates that counterclaimant Nguyen’s opposition memoranda
7 fails to adequately address the issues raised—albeit defectively—in his counterclaim. Nguyen,
8 therefore, has failed his duty of “[a]nalyzing relevant statutes and presenting applicable legal
9 authority.” CMM Cable Rep, Inc. v. Ocean Coast Props., Inc., 97 F.3d 1504, 1525-26 (1st
10 Cir.1996). “Passing reference to legal phrases and case citation without developed argument is
11 not sufficient to defeat waiver.” Rocafort v. IBM Corp., 334 F.3d 115, 121 (1st Cir. 2003).
12 Pursuant to this circuit’s well-established “‘raise-or-waive’ rule,” which “[a]pplies with equal
13 force to situations where a [counterclaimant] . . . raises an issue in his [counterclaim], but then
14 fails to adequately address it as part of his summary judgment argument[,]” id. (citation
15 omitted), Nguyen’s failure to proffer a developed argument to Plaintiffs’ contentions is
16 tantamount to waiver. Although Nguyen’s counterclaim can be decided on the above-discussed
17 “raise-or-waive” rule, the court briefly dispatches it on the merits.
18

19 It should go without saying that, in diversity cases such as this one, state law governs the
20 substantive outcome. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938); Essex Ins. Co. v.
21 BloomSouth Flooring Corp., 562 F.3d 399, 403 (1st Cir. 2009). This action arises in the “field
22 of torts,” which in turn is controlled— “[b]oth in form and in content—by the civil law system.”
23 Valle v. American International Insurance Co., 8 P.R. Offic. Trans. 735, 736, 108 P.R. Dec.
24 692, 695 (1979) (Trias, C.J.). In turn, Article 1802 establishes that a “person who by an act or
25 omission causes damage to another through fault or negligence shall be obliged to repair the
26 damage so done.” P.R. Laws Ann. tit. 31, § 5141. A claimant seeking relief under this article

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2 must establish “(1) a negligent act or omission, (2) damages, and (3) a causal relationship
3 between them.” Soc. Gananciales v. Padin Co., Inc., 17 P.R. Offic. Trans. 111, 117 P.R. Dec.
4 94 (1986). The scope of negligence under Article 1802 is broad—“as broad as the behavior of
5 human beings... includ[ing] any fault that causes harm or injury.” Bonilla v. Chardon, 18
6 P.R. Offic. Trans. 696, 709, 118 P.R. Dec. 599 (1987) (quoting Colon v. Romero-Barcelo, 112
7 P.R. Dec. 573, 579 (1982)). Nevertheless, the existence of an injury or damages alone is not
8 grounds for liability under Article 1802. A defendant will be liable only for those reasonably
9 foreseeable consequences associated with his acts or omissions. Wojciechowicz v. United
10 States, 576 F. Supp. 2d 241, 270-72 (D.P.R. 2008) (citing De-Jesus-Adorno v. Browning Ferris
11 Industries of Puerto Rico, Inc., 160 F.3d 839, 842 (1st Cir. 1998)), aff’d, 582 F.3d 57(1st Cir.
12 2009)

14 Regarding a defendant’s omissions, those “that generate[] liability under Article 1802
15 happen[] when ‘the law imposes a duty of care requiring the defendant to conform to a certain
16 standard of conduct for the protection of others against unreasonable risk.’” Zabala-Calderon
17 v. U.S., 616 F. Supp. 2d 195, 199 (D.P.R. 2008). The duty of care may arise in one of three
18 ways: “(1) by a statute, regulation, ordinance, bylaw, or contract; (2) as the result of a special
19 relationship between the parties that has arisen through custom; or (3) as the result of a
20 traditionally recognized duty of care particular to the situation.” De-Jesus-Adorno, 160 F.3d
21 842. Moreover, “the duty is defined by the general rule that one must act as would a prudent and
22 reasonable person under similar circumstances.” Vazquez-Filippetti v. Banco Popular de Puerto
23 Rico, 504 F.3d 43, 49 (1st Cir, 2007) (citing Ortiz v. Levitt & Sons of P.R., Inc., 1 P.R. Offic
24 Trans. 407, 101 P.R. Dec. 290 (1973)). Although the duty of care calls for the anticipation of
25 reasonably probable injuries to probable victims, Marshall v. Perez Arzuaga, 828 F.2d 845, 847
26 (1st Cir. 1987), “the foreseeability required under [Article] 1802 does not extend to all

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3 imaginable effects resulting from defendant's conduct. This would be tantamount to turning the
4 defendant into an absolute insurer of its acts and omissions." Wojciechowicz, 576 F. Supp. 2d
5 at 272. Therefore, a person breaches the duty of reasonable care only when his actions create
6 reasonably foreseeable risks. Vazquez-Filippetti, 504 F.3d 43, 49.

7
8 Here, Nguyen's claim that Plaintiffs negligently hired PRSD "with the knowledge that
9 it lacked the proper permits," borders on frivolous. As correctly pointed out by Plaintiffs,
10 Nguyen was not a party to the contractual arrangements in this case. Above all, Nguyen's
11 "damages"—damages to personal reputation, loss of commission, emotional distress and
12 attorney's fees—bear no causal connection with Plaintiffs' alleged negligent acts. The damages
13 for loss of commission have nothing to do with the permits' obtainment; rather, they relate to
14 Plaintiffs' cancellation of their contract with Zen America.⁶

15 As to the remaining damages, suffice it to say that such "damages" were caused by
16 Nguyen's own doing, that is, his fraudulent actions in engineering the inspection report that
17 ultimately lured Plaintiffs into disbursing millions of dollars. Had Nguyen refrained from
18 intentionally including fallible information in the inspection report, his reputation would have
19 remained untarnished, and he would not have been sued. By like token, his alleged "emotional
20 distress" was intentionally inflicted as a result of such fraudulent machinations. None of these
21 alleged damages, then, relates to Plaintiffs' negligence in the obtainment of the permits. It thus
22 flies in the face of reason that Nguyen has the audacity to allege such "damages." Because
23 Nguyen has failed to rebut Plaintiffs' contentions that there is no causal connection between his

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26 ⁶ The fact that Nguyen did not include damages for loss of commission in his counterclaim
precludes him from doing so in his opposition for summary judgments. See Marrero-Rodríguez v.
Municipality of San Juan, No. 11-1195, 2012 WL 1571234, at *3 (1st Cir. May 7, 2012).

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3 “damages” and the latter’s alleged negligent acts, his claim on this front is way off the mark.
4 See Sociedad de Gananciales v. Jeronimo Corp., 3 P.R. Offic. Trans. 179, 103 P.R. Dec. 133-34
5 (1974).

6 Equally flawed is Nguyen’s one-sentence allegation that Plaintiffs’ failure to secure the
7 Mill caused him “damages.” By failing to show how a “traditionally recognized duty of care,”
8 De Jesus, 160 F.3d 842, imposed upon Plaintiffs a duty to maintain security at the Mill, Nguyen
9 falls short of rebutting Plaintiffs’ contentions on this front. Assuming arguendo that Plaintiffs
10 had such a duty, it cannot be said that Plaintiffs could have foreseen that failing to provide such
11 security would have harmed Nguyen, a third-party to Plaintiffs’ contractual arrangements, and
12 a stranger with no proprietary interest over the Mill. While human experience dictates that
13 leaving a place unsecured can result in its looting (as Nguyen alleges happened here), no
14 reasonable, prudent person could have anticipated that failing to provide security at the
15 Mill—and the alleged ensuing loss of metal—would have caused harm to Nguyen. Put
16 differently, in the normal course of events, failing to maintain security at a Mill does not
17 ordinarily produce the kind of harm Nguyen complains of. See Sepulveda de Arrieta v. Barreto,
18 1994 P.R.-Eng. 908,876, 137 P.R. Dec. 735, 759 (1994). The consequences of Plaintiffs’
19 alleged wrongdoing, then, were “[r]emote and unlikely[,]” Rodriguez v. Señor Frog’s De La
20 Isla, Inc., 642 F.3d 28, 36 (1st Cir. 2011) (citations omitted), and, under these unforeseeable
21 circumstances, fall outside of Article 1802’s purview. It is thus unwarranted to impute
22 responsibility to Plaintiffs.

23
24 Because Nguyen falls short of satisfying the requisites of Article 1802, his counterclaim
25 fails as a matter of law. The evidence of record buttresses this conclusion. In sum, there is no
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3 genuine issue of fact to submit to a jury, Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986),
4 and, under Puerto Rico's tort law, Nguyen's counterclaim against Plaintiffs must be dismissed.

5 **Conclusion**

6 For the reasons stated, Plaintiffs' motion summary judgment is **GRANTED**. Nguyen's
7 counterclaim against Plaintiffs is therefore **DISMISSED with prejudice**.

8 **IT IS SO ORDERED.**

9
10 In San Juan, Puerto Rico, this 2nd day of July, 2012.

11
12 s/*Salvador E. Casellas*
13 SALVADOR E. CASELLAS
14 U.S. Senior District Judge